

Planning & Zoning Commission
Agenda
March 19, 2013
6:30 pm
Milton Library – 121 Union St

Transcriptionist: Helene Rodgville
[Minutes are Not Verbatim]

1. Call to order
2. Roll call of members

Barry Goodinson	Present
Lynn Ekelund	Present
Tim Nicholson	Present
Don Mazzeo	Present
Linda Edelen	Absent
Bob Heinrich	Absent
3. Additions/Corrections to agenda
Don Mazzeo: Do we have any additions or corrections to this evening's agenda?
4. Approval of agenda
Don Mazzeo: Hearing none...
Lynn Ekelund: Move to approve the agenda.
Tim Nicholson: Second.
Don Mazzeo: All in favor say aye. Opposed. Motion is carried.
5. Approval of minutes – January 15, 2013
Don Mazzeo: Approval of minutes from January 15, 2013. There were a substantial amount of pages there. I'm sure everyone has gone through them and found something small. I hope there's nothing of any consequence in there.
Lynn Ekelund: Move to approve the minutes of January 15, 2013.
Tim Nicholson: Second.
Don Mazzeo: Minutes are approved.
6. Public Hearing
Don Mazzeo: Tonight we have three Public Hearings; we have a Preliminary Site Plan Review for Chestnut Properties; a Preliminary Sub-Division Plan Review for Heritage Creek/Fernmoor Homes; and a Conditional Use application.

a. Preliminary Site Plan Review/Approval

The applicant, Chestnut Properties, is requesting a preliminary site plan review/approval to construct an underground propane tank field on a portion of the open space area in Phase 2B of Cannery Village. The proposed propane tank field will be located in the area of the Community Center. The property is identified by Sussex County Tax Map and Parcel # 2-35-20.00-57.00.

Don Mazzeo: Do we have representation this evening from Chestnut Properties?

Zach Crouch, Davis, Bowen, Friedel, representing the applicant: This evening we're here for a preliminary site plan approval. I think Mr. Kerr actually presented an itemized memorandum of all the items after his review of the property; but basically we're here because there's an existing tank field that's out there now that's basically temporary; it's been there for some time now and they want to put the permanent facility in; which is going to entail for everything to be underground. I've got an aerial here, which shows the location of where the temporary field is at and of course, the proposed field which is basically right across from the WBOC building. It's in an open space now and what it's going to consist of is eight tanks, which total about 2,000 gallons of underground storage; 2,000 gallons apiece, I'm sorry. Tonight we're here to show the difference between the two and the request for this. I have some pictures and I want to go through the memorandum and address some of the issues, but I have some pictures too that I think will clear up what the Poore's Propane has done in the past at several other facilities; one is Canary Creek down in Lewes; a second one is Fairway Village out in Ocean View; but it just gives you an idea of what the underground facility will look like; what they plan on doing to show that what they have out there now which is clearly enclosed by vinyl fencing, but the tanks are above-ground. These will be totally underground and the facility that they're proposing is landscaped and the type of fence they want to use is a chain link with green slats in between them; which the evergreens that they're proposing are around 7' tall. I'm going to pass out some pictures, but you can see that what they've done as a product down in Canary Creek, as well as Fairway Village, to see what the final product is.

Don Mazzeo: May I interrupt you for just one minute? Did you say that there was going to be eight tanks?

Zach Crouch: Yes.

Don Mazzeo: Everything that we have in front of us says ten.

Zach Crouch: There are ten. I'm sorry.

Don Mazzeo: Okay, so we are looking at ten tanks, not eight as you have just stated.

Zach Crouch: I guess I should have looked at the site plan before.

Don Mazzeo: Okay.

Zach Crouch: There again, I wanted to show these because these are actually two sites that exist today, so you'll see, as they go through these comments what the outside's going to look like; what the inside's going to look like; and what's exposed. Because as we go through these comments, there were some specific questions and referenced to those. Basically I'll start with no. 3, in reference to when, if this facility is approved, when will the old facility be removed and the old facility, once the new facility is up and running, would be removed within 30 to 45 days. So it's something that's not going to be dragged out for a 3 to 6 month time period; between 30 and 45 days, the existing facility will be removed. The access to the facility, which would be basically a gravel driveway to the facility and that facility, everything on this parcel, will be maintained by the Applicant; the landscaping, the mowing of grass, all the maintenance of this, as well as the drive itself will be maintained by the Applicant; meaning the Town will have no responsibility whatsoever.

Tim Nicholson: Can you define the Applicant?

Zach Crouch: The Applicant would be Porsche Propane.

Tim Nicholson: So it's not Chestnut Properties?

Zach Crouch: Well Chestnut Properties is the entity, but Poore's Propane is the same entity as that.

Tim Nicholson: I'm just saying they're different entities.

Zach Crouch: Well Porsche Propane is the one that will be delivering the fuel.

Tim Nicholson: I know that. I understand that, but I just want to make sure who's going to maintain it; is it Chestnut Properties or is it Poore's?

Zach Crouch: It's Poore's Propane.

Tim Nicholson: Okay, thank you.

Zach Crouch: Chestnut Properties is the owner; we're getting an easement from them.

Tim Nicholson: I know.

Lynn Ekelund: But Chestnut Properties is the Applicant; so it will not be maintained by the Applicant; but it will be maintained by the supplier of the fuel?

Zach Crouch: Yes, part of the easement agreement. Yes.

Lynn Ekelund: Thank you.

Zach Crouch: The deliveries. One of the questions was in reference to deliveries. How many deliveries will be made and what type of vehicles will be utilizing the facility? Right now, the existing facility has between 12 trips a month for refueling the existing tanks; the new facility will be once a week during the winter months and once a month in the summer months. So with increase of the tanks; it's going to cut down on traffic, as well as the amount of times that they have to come and fill up the tanks. The trucks, I've got Charles Sockwriter right here who is with Poore's Propane to answer any specific questions, but I'm going to let him explain to you what type of trucks will be delivering the fuel, which is exactly the same trucks that are delivering the fuel as of today. So, if you don't mind, Charles, you can explain the type of truck.

Charles Sockwriter, Poore's Propane: It's a single axle tractor-trailer that delivers to the temporary facility right now. It would be the exact same truck that does it now, only it won't have to do it as many times; because you have a larger capacity, larger storage, we won't need to deliver as often.

Zach Crouch: So you're not going to have one of these big tractor-trailers coming in here and doing it. It's going to be a single axle. The parking facility on number eight, basically there's only going to be one vehicle that comes here to either check up on the facility or to deliver some fuel. We don't need additional parking. It's not like it's going to be 10 or 15 people out there at any time. They'll come by once monthly to inspect it, but there again, you're not going to have a lot of traffic coming to the site. As far as lighting requirements, there's no lighting requirements that are needed. All the fuel, when they refill the tanks will be during the day; it's not going to be done in the night hours, so there's no need for any type of lighting requirements, as well as signage; since the drive aisle is going to be... what we're requesting is just aggregate; there's not going to be the need for any signage or anything like that, as far as a Stop Signs, because Poore's will be maintaining that alley or the access way. No. 13 references the material for landscaping; actually No. 12. The materials for landscaping, we had it noted as 5' to 6'. We understand the Code says a minimum of 7'. It will be specified on the final plan that the minimum will be 7'. The easement, based on comment no. 13, there's plenty of room to extend the easement, so with the concern of the landscaping being outside the easement to make sure it's adequate distance from the fence itself, there again, we will ensure that there's proper distance between the fence and the landscaping, so that everything's within the easement. If we would have to extend the easement by 3' to 5', there's plenty of room to do that, so we'll make sure that's addressed on the final plan.

Lynn Ekelund: On the final plan, then you are going to extend the easement 5'?

Zach Crouch: Yes, 3' to 5', whatever... once we put the proper landscaping in there, per the 7' minimum, if we have to extend it, we'll make sure that everything's covered within that easement.

Lynn Ekelund: But my question is you just said "if" we have to extend it; on the final plan, is the easement going to be extended 3' to 5'?

Zach Crouch: Yes.

Lynn Ekelund: Thank you.

Zach Crouch: My point is that at 7' the footprint for the specific landscaping that the Town's

requesting, if we needed to extend it based on the footprint and the growth and everything from our landscape architect, we would extend it; but I don't know what the growth diameter is on that specific tree; so if it needs to be extended, we will extend it. The concern was to make sure that everything was in the easement. What I'm going on record and telling you is that the final site plan we'll make sure that the fence, the landscaping, is all within the easement per your recommendations here. No. 14, the consideration of additional landscaping, from the pool deck of the clubhouse; the photos that I sent around, that's how come we're going to request this chain link fence with the green slats and as you can tell, with the evergreens that are being planted, which are the same type of evergreens that were planted at Canary Creek, they blend in with the fence instead of having a white fence; and these trees are actually a year old, so by the time they get mature, you won't even see the fence; but you don't see a white fence behind it. It blends in and we think it's a better look, instead of having a clash of white and green there, so that's why I did bring the pictures. No. 15, is just as I explained, everything inside the easement will be the responsibilities of Poore's Propane, so there will be no responsibility for the Town and everything inside that easement will be maintained. There is another question in reference to the inside of the fence; and there are a couple of pictures there; basically everything is gravel. From a maintenance perspective of grasses and things of that nature, and there again they treat it, to make sure that no weeds or stuff grow up into it, but it's easier for them to maintain and also there are certain Fire Marshall requirements that need to be met, too; and that goes into the fence. The fence is required, so I think there was a comment in there about is the fence really required? Yes, it is, for security reasons just to keep people out of there. Based on that, we're here to answer any questions. Mr. Charles has a lot of experience with Poore's, so please feel free.

Tim Nicholson: Question. Okay. What about the existing facility, once that's removed? What's going to happen to that land?

Zach Crouch: It will be left opened.

Tim Nicholson: So no seeding, or...

Zach Crouch: Well, yeah, it...

Tim Nicholson: That's what I'm trying to get at.

Zach Crouch: It will be seeded and stabilized.

Tim Nicholson: Yes.

Zach Crouch: Yes.

Don Mazzeo: You're proposing a stoned access route going into the rear of the portion of the property for your trucks. Why not a paved facility entranceway; something more stable that won't drag out and wind up on the properties that are along side of it; back into the street, perhaps?

Zach Crouch: If the Planning and Zoning Commission would like that, request that recommendation, we'd be more than happy to accept it, but they would rather do concrete. There again, based on stormwater management and trying to keep everything within 5,000 sq. ft. and trying to keep stormwater management to a minimum, we can still do it that way; we did it in two of the other facilities; but they're trying to eliminate some of the impervious area. If the Commission would like to see some type of impervious concrete and/or asphalt, that's not a problem.

Don Mazzeo: Okay.

Zach Crouch: There again, irregardless of what it is, it will be maintained by Poore's, so there will be no maintenance by the Town.

Don Mazzeo: You're going to have additional vehicle traffic coming in and out to do maintenance in the right-of-way that you're going to have around it, for your plantings and such; or is there going to be grass around it?

Zach Crouch: No, there will be grass around it. There will be one access; there's a gate located here and basically they'll get out of their vehicle, go through the gate, make the ratings and do their monthly checks and leave; so there's plenty of space to park one vehicle here and the chances of both vehicles, the tanker and the service person being there at the same time are pretty much slim to none.

Don Mazzeo: Any further questions from the Commission at this particular time?

Tim Nicholson: How long a period of time will it take to construct this new facility, approximately?

Charles Sockwriter: Do you mean how much time we would actually be at the site?

Tim Nicholson: When would it be operational?

Charles Sockwriter: Depending upon availability of materials, it could be less than a month.

Tim Nicholson: Really?

Charles Sockwriter: Yes.

Tim Nicholson: Okay.

Charles Sockwriter: I would like to say two weeks, that we'd be done in two weeks, but then we've also had problems getting materials. It doesn't take very long at all. You could put the tanks in a day and a half.

Tim Nicholson: Really?

Charles Sockwriter: Yes and they're all underground. All you see is a little dome; I don't know if you saw in the pictures vs. what's there now and we have to have vaporizers at what's there now and we don't have to have any of that. The tanks take care of everything; that's why they have those size tanks.

Don Mazzeo: So the only above-ground facility that you'll have there is just some piping?

Charles Sockwriter: Actually four regulators and some piping and that's it. And I don't think you can see those in these pictures that he gave, or not. It's not very big.

Don Mazzeo: Well, I for one, would definitely like to see something more permanent on your drive going in, rather than crushed stone or gravel or whatever you had particularly planned there. The other members of the Commission agree?

Barry Goodinson: I agree.

Tim Nicholson: I agree.

Lynn Ekelund: I do too.

Charles Sockwriter: So I guess as long as the Commission would not have an issue with concrete, we would prefer concrete.

Tim Nicholson: That's fine.

Don Mazzeo: I don't believe there would be any condition placed upon whether it's macadam, concrete, whatever your feelings are, we will accept on your final, when you come back, but it will not be gravel, based on what we're hearing tonight. Okay?

Charles Sockwriter: Okay.

Don Mazzeo: Any other questions of the Commission? Hearing none, I will open this up to public comment on this particular application. For the record, please state your name and address.

Michael Cote, 304 Gristmill Drive: I have a letter from Mr. Ed Kost, and I thought it was delivered already, but I guess it wasn't and so I'll leave a copy when I'm done and one of his items that he had an issue with was this driveway and he cites Section 7.2.6 that says all off street parking areas shall be paved with a suitable all weather dust free surface and especially, since it's going to back up to a swimming pool.

Don Mazzeo: I think we may have addressed that.

Tim Nicholson: Yes.

Michael Cote: There's that and I'll leave the copies of the letter and he also provided some

photographs. This particular photograph shows how that corner, the corner of the roadway, the entrance to this will be on the corner of a back of one of the alleys that runs behind the houses and that corner floods. Every time it rains, it's a small pond, right in that corner where they're going to be accessing the tank farm. Right here. This is one of the areas that floods every time it rains. Here's the access to here. So I think that something may need to be handled, either by Chestnut Properties or Poore's or someone, to correct that flooding situation in that corner, before we make it a commercial vehicle access way. He talked about the trees, which you've already talked about and the other suggestion that he made was that there be a formal, written bond or guarantee from Poore's or Chestnut Properties, whichever it may be, that the temporary farm will be dismantled and what they just said they would do in that area is seed it and stabilize it; but some written specific guarantee that that happens. That's all.

Tim Nicholson: You're right.

Mike Cote: Here are a couple of copies of the letter and the picture of the flooding, and the standing water, the picture of the temporary facility.

Tim Nicholson: In all it's glory.

Don Mazzeo: Do we have any others?

Jeff Dailey, 211 Gristmill Drive: I just want to call the Commission's attention and I'm citing a neighbor of both Michael Cote and myself, Mr. Ed Kost, who has commented on the fact that with the sale of a parcel of the Cannery Village development, there are now thoughts that some of the parking behind the Canning Row quads has been decreased; also the newer townhouses that are directly across from the annex to the brewery; they no longer have right-of-way to the driveway behind their property and I know that this isn't in the immediate vicinity of the tank farm, but it seems to me that the Town at some point has to look at the big picture; the entirety of the land sale; the Large Parcel Development overlay, which has in effect been negated and given that, I'm just curious when WBOC was put in place, when the brewery was put in place with the expansion, have we looked at every single parameter, every setback and taken the whole of this into consideration. I know nothing about propane or tank farms. I'm not an expert in that. But something tells me that such a large development of propane within proximity of residences and commercial buildings and a swim club; to me and my sensibilities, it's just alarming and I'm just curious how you can make a recommendation, again based on the negation of the LPD. It no longer exists as it existed in 2001. So I would put that in front of you and thank you.

Don Mazzeo: Any other comments, questions, concerns regarding this? Hearing none, I will close this public portion.

Seth Thompson: Did we receive any written comments?

Robin Davis: No. No. None at all.

Seth Thompson: Okay.

Lynn Ekelund: Excuse me, is that other than Mr. Kost's?

Don Mazzeo: Right.

Robin Davis: That is correct. No comments were received at Town Hall prior to 5:00 p.m. today.

Lynn Ekelund: Thank you.

b. Preliminary Subdivision Plan Review/Approval

The applicant, Fernmoor Homes at Heritage Creek, is requesting a preliminary subdivision review/approval for Phase 3 of Heritage Creek further identified by Sussex County Tax Map and Parcel # 2-35-20.00-56.00.

Don Mazzeo: Do we have representation here this evening from the applicant?

Mike Coven, George, Miles and Buhr: Good evening. We're the owner's engineer. I'm hoping that you have something that looks like this in front of you. You have to pardon my make-shift easel. What we're here for this evening is Phase 3 of the Heritage Creek development and it's located – it's the block directly adjacent to the work that's going on right now in Phase 2B and then the lots that surround the existing pond. So the area outlined in black is what we're looking at tonight. So Phase 3 is about 14-1/4 acres and it has 46 single family homes, 6 triplexes and 4 duplexes, for a total of 56 lots. The layout that you see here is the same as was approved in the Master Plan; no changes in layout. Adequate parking is provided and this does conform precisely to the approved Master Plan. A couple of things I wanted to point out, Note 20, which talks about the yard requirements is on the front sheet of this plan. I understand from Mr. Kerr's comments that those lines are graphically shown incorrectly on some of the drawings and that will be taken care of before we get to final. Lots 162 through 165, were discussed during the Master Plan review and the landscaping berm that we talked about has been set up there and I think it's Nellie Stevens Holly's is what we ended up using there and hopefully that takes care of what you were looking for there?

Tim Nicholson: Yes. Thank you.

Mike Coven: The only other thing I wanted to mention is that there's a pretty fair likelihood that this phase will be done in sub-phases; so we've tried to give some thought to that up front exactly how that would work; how the utilities would terminate; just to make sure that everything goes smoothly through this. We're showing four sub-phases; it's possible, depending on the pace of things that more than one of these could be active at a time, or they may go one at a time.

Tim Nicholson: Just to clarify, does that mean that you would be coming back with each sub-phase; come back to us?

Mike Coven: No.

Tim Nicholson: No. Okay.

Mike Coven: No, we're asking for approval of the entire phase. There's a possibility that they would only bond and record one sub-phase at a time; but as far as the Planning and Zoning Commission, we're asking for approval of the entire phase.

Tim Nicholson: Right, okay.

Mike Coven: That's really all I have. I don't want to preempt Mr. Kerr, but I do have one or two remarks on his comments, when he's through.

Don Mazzeo: At this time, please address them for us.

Mike Coven: Sure, I can do that. The first six are generally informational. In No. 7, he does point out that the grading plan does take care of where the pond had infringed on some of the lots earlier and we talked a little bit about No. 8. Clearly we intended for those to be 22', but graphically on a couple of the drawings, they still look like 5'. That's actually already been taken care of, but it didn't get on this particular plot; it didn't show it correctly. No. 9, I would like to take that in two parts. As far as the water goes, for those lots, and what we're referring to here are these two lots. We showed an easement wrapping around the back of these; the intent there was to take advantage of existing stubs that were in place, for both water and sewer so that we wouldn't have to tear this existing street up.

Don Mazzeo: Was it a street, or is it just the first coat?

Mike Coven: It's the base coat.

Don Mazzeo: So it's not a street yet.

Mike Coven: Okay. As far as the water is concerned, really we were just trying to keep from tearing that up... but as far as the water is concerned. The water is on this side of the street and it's only 4' below grade, so there wouldn't be any objection to moving that to the front and I think that takes care of the meters that Bob was concerned about.

Don Mazzeo: Mr. Kerr, sign in.

Bob Kerr: Yes, that was my concern; the town doesn't own or maintain the sewers at this point, so I don't think the town cares where the sewer runs, but to make it easier for the town to maintain and to gain access to the meters, would be easier if it were in the front.

Mike Coven: That would be a relatively small impact on the street, too. I would ask though that you consider allowing the sewer to stay where it is, because the existing sewer main is all the way across the roadway and it's 12' in the ground; so that would be a considerably bigger impact on that roadway.

Don Mazzeo: Well, I'll ask the silly question. I guess it's buried that deep because when you originally had that plan, that particular layout wasn't there.

Mike Coven: Right. There was an alley that went through there and there were a number of homes and this goes also back farther into the development.

Bob Kerr: That would be part of the overall sewer plan; it serves the entire community, so the depth is set all the way through.

Don Mazzeo: So from your perspective on an engineering standpoint, leaving the sewer where it is, should not be an issue.

Bob Kerr: It should not be an issue.

Don Mazzeo: The water...

Bob Kerr: It will not be an issue to the town, Tidewater has to deal with it and so it would be their opportunity.

Mike Coven: Tidewater will have to approve that, naturally; but...

Bob Kerr: Right. The one thing that if you give a preliminary approval and it is not something that's normally done, but to allow them to go ahead and install the water service now, because there are discussions going on that the roads will receive a final pavement sooner than probably this Phase 3 will be started and finished, so to go ahead and put that in so that it doesn't have to be cutting of the final pavement.

Tim Nicholson: Okay.

Don Mazzeo: Now, we'll have a street.

Bob Kerr: Then it would be a street.

Don Mazzeo: There you go.

Mike Coven: No. 10 actually refers to the aprons on the alleyways and we've already had some discussions with Mr. Kerr on that and we are changing that detail, going forward.

Don Mazzeo: So you will meet ADA standards?

Mike Coven: Yes.

Don Mazzeo: Okay, that's the important part.

Mike Coven: We've also gotten in touch with the contractor to make sure that that change has taken place on the piece that's under construction now to get... No. 12, I don't have any objection to the comment in itself, I just would hesitate to cut the berm that we're forming for the landscape screening there; and I just wonder if that could be taken around the back and connected on the other side of the berm?

Don Mazzeo: We asked you to put that berm there; then to come back and ask you to take it apart, doesn't make sense in my opinion.

Tim Nicholson: Right.

Mike Coven: There is a connection to the street. It's up here.

Don Mazzeo: Let's just assume, at this point, since we haven't got any motion yet, that we're not going to take apart that berm.

Mike Coven: Okay. No. 13, I guess the trees on the berm were listed as 6'; we'll change that to 7'.

Don Mazzeo: Change that to 7'.

Mike Coven: I wasn't aware of that. And tree wells will be added to the plan. That's all I have.

Don Mazzeo: Mr. Kerr did you have any other comments on that?

Bob Kerr: The only other comment would be as the sidewalk along Route 5 is laid out now, someone coming from Phase 1, which is further to the east in the woods, you would walk down along the road and then go back to almost the center of the property to get in, so people are probably going to make a path up and across the berm, or something.

Barry Goodinson: I'm not sure if I'm following that. Can you just describe a little bit, because I've not really seen the detail on here, the walkway that we're talking about?

Mike Coven: I think what Mr. Kerr's talking about is bringing the walkway along 5 and trying to terminate it somewhere around this lot; he's suggesting that maybe we take it around to the back.

Bob Kerr: There is presently a walkway that comes from Phase 1 and comes up here and then you can get into the sidewalk system; before, on an earlier phase; there have been many preliminary drawings throughout the development; when there weren't lots coming out here; this more or less came down and tied back in someplace here; so someone walking down here would use this path, not that; so most people are going to...

Barry Goodinson: I see.

Don Mazzeo: But in a real life world, how many people are going to be walking there? I know you're a he-man and you want to walk it every night. I understand. I just don't see us taking apart a berm; but you're probably right; it's going to create it's own path eventually.

Bob Kerr: I can't believe I'm saying this, but I'm putting on the DelDOT hat that they put a sidewalk in front of everything now, or a multi-modal, which is sidewalk and bicycle and I'm doing one right now that the nearest house is 4 miles away and we're putting a sidewalk in front of it.

c. Conditional Use Application Review/Approval

The applicant, Paul Garchinsky, is requesting a review/approval of a conditional use application for the internet-based sales of historical and modern firearms in a portion of the home located at 426 Main Sail Lane. The property is further identified by Sussex County Tax Map and Parcel # 2-35-14.00-184.00.

Don Mazzeo: Do we have representation this evening from the applicant?

Paul Garchinsky, 426 Main Sail Lane: I'm just applying for a Conditional Use permit for internet-based sales of historical and modern firearms; not modifying the property; not requesting any modifications of any road, housing, signs; basically my neighbors won't even know that I'm doing it and I have received preliminary approval from the Department of Transportation, because I don't need to do anything and the State Fire Marshall's office I have approvals for.

Don Mazzeo: Could you give us a little explanation as to what you'll be physically doing there?

Paul Garchinsky: Yeah, I'll be listing historical and modern firearms, just on internet sites, Gun Broker, being one of them and basically I'm going for my Federal Firearms License, the FFL and what you do, basically; it's kind of like E-Bay for firearms and what you'll do is you'll put a listing up on there; whether it be a physical listing that I have in my presence, or in my safe, or whatever; or kind of the middleman and if it goes up for sale, it will go for sale; if it does sell, then I ship to another FFL, or the company that I'm representing, or whoever I'm working for will ship to another FFL.

Don Mazzeo: Do you store firearms on site, with this application?

Paul Garchinsky: Not typically, no. I have... I personally do, so I'll have some in my safe; but at times you're asking will there be...

Don Mazzeo: Will you be processing and handling firearms coming on the premises and leaving your premises for the purposes of the business?

Paul Garchinsky: I guess the immediate answer is yes, but, not without the proper channels, as far as signature based Federal Express or something like that; but it would be myself driving them to a secure location; driving them to a FedEx or UPS or something like that for shipment.

Barry Goodinson: Do you need the same kind of license as the gun dealer would need, a gun store, do you have to have that kind of a license to do this?

Paul Garchinsky: That's basically what it is; that's basically like Hopkins, or Steele's, or something like that. They're working under what would be the same thing.

Barry Goodinson: Do you have that license?

Paul Garchinsky: I don't, but I have preliminary approvals from the ATF, background checks and all that stuff. Yes.

Barry Goodinson: When do you expect to get final approval for it?

Paul Garchinsky: They're waiting on final approval of Planning and Zoning and Town Council.

Barry Goodinson: Wow.

Paul Garchinsky: They already called me to make an appointment to come down and issue the license.

Lynn Ekelund: Have you contacted the Milton Police Department?

Paul Garchinsky: I have. When you apply for the application, you have to fill out an application, which I have a copy of; that goes to your Chief Law Enforcement Officer and you hand that copy in with all your information regarding what you'll be doing and it's up to him to go ahead and do the background check, as well.

Lynn Ekelund: So, you've contacted the Milton Police Department and it would be their responsibility to do the background check in this process in which you're currently applying.

Paul Garchinsky: If they had any issues, or they had seen something for any reason that they knew of with me.

Lynn Ekelund: So it's not their responsibility to do the background check; they would receive the results of the background check done by the Federal Government?

Paul Garchinsky: Both, really, it's their job to say I know this guy or I don't know this guy or I want to do a check on this guy; because he's going to bring this into our town.

Lynn Ekelund: What have they done as a result of you contacting them? If anything.

Paul Garchinsky: Nothing. No, nothing. Nothing at all. I've received nothing from them.

Barry Goodinson: I have a question. You're asking for a Conditional Use and according to the Code it says the purpose of Conditional Use approval is to provide for certain uses, which cannot be well adjusted to their environment in particular locations, or are not permitted in the current zoning district, but would not have an adverse affect on the surrounding area and properties. These uses are generally a public or semi-public character and our essential and desirable for the general convenience and welfare of the town. So we're being asked to approve something that is essential and desirable for the general convenience and welfare of the town. I know, as a businessperson, this is essential and desirable for you to make a living, but I'd love to hear how giving permission would enhance the town?

Paul Garchinsky: That's a great question. A question that I'm not prepared for.

Barry Goodinson: Okay, that's...

Paul Garchinsky: I mean, other than application fees and yeah... Yeah, it's a great question.

You got me on that.

Don Mazzeo: Well I have another question for you, then. Were you aware that your declaration of restrictive covenants prevents you from having a business in your home?

Paul Garchinsky: From the old Homeowner's Association that has been dissolved, you're saying?

Don Mazzeo: These are restrictive covenants, regardless of whether there's an Homeowner's Association there or not; something you signed for when you purchased the property. It's on your deed and it says, according to this, and I read it verbatim: no trade or business of any kind or character, nor any buildings designated or intended for such use, shall be directed, permitted, maintained or operated within the sub-division. You are within the sub-division and while Milton does not enforce covenants, I question whether your neighbors are familiar with the fact that you're doing a business on site when it's not permitted.

Paul Garchinsky: Yeah, I understand that, yeah. Like I stated before, you would really never even know that I was there.

Don Mazzeo: Except for those occasions when there's weapons being delivered and/or transported from your facility, your home, to FedEx or UPS.

Paul Garchinsky: No different then myself going out and going to a shooting range.

Don Mazzeo: This is a true statement, except that eventuality is that... No. No. I'm not going there. I'm not going to go there. I guess the question that I pose is that if this is a retail operation basically; it's retail. I mean, you're not having someone coming to your home, I understand that.

Paul Garchinsky: No. I'm not going to have... No customers. No employees. Nothing like that.

Don Mazzeo: You're not having employees, you're not having visitors, per se; however, let me ask this, if someone were to utilize your services, and happens to live in Milton, are they going to carry a weapon to you, and then you're going to sell it to Party B; you'll store it for a period of time?

Paul Garchinsky: You sometimes deal with seedy characters, so I can honestly answer that with saying that I really don't want anybody in my home.

Don Mazzeo: So you would turn away business, then; theoretically?

Paul Garchinsky: Theoretically, I would. It would be a part-time gig for me and I'm currently the manager at Surf Bagels, so just a little supplement to the income.

Don Mazzeo: Well do we have any other further questions from the Commission at this point?

Seth Thompson: Do you know of any other business uses in the development, in Shipbuilder's Village?

Paul Garchinsky: I just heard rumors that there was and I can't prove anything. I didn't do any further research, I just heard that people were doing it, but I can't prove it.

Seth Thompson: In terms of approved businesses?

Paul Garchinsky: In terms of approved businesses, yeah, I can't prove anything. I do know, however, that there are three other FFL's located within Milton, that are privately held in their homes.

Lynn Ekelund: Actually, you submitted that and while they have Milton mailing addresses, they're not within the jurisdiction of the Town of Milton.

Paul Garchinsky: All of them are?

Lynn Ekelund: None of them are. So just because something has a mailing address of Milton and a 19968 zip code, does not mean that they're within the jurisdiction of the Town of Milton; and the four that you submitted to us, none of them.

Paul Garchinsky: Oh, okay.

Don Mazzeo: Any other questions or comments at this time from the Commission? I'll open this up to the public at this point, one at a time, please; come to the microphone, state your name and address please.

Karen Foyo, 428 Rudder Lane in Shipbuilder's Village: My question concerns the storage of the weapons. Will you also be storing ammo to go with the weapons?

Don Mazzeo: Ma'am, please address the questions to the Commission and then we will take it from that point.

Karen Foyo: Well that was my concern was that he would be storing ammo with the weapons, and in that case, if that was the case, what kind of preparation, if any at all, has he made in case there was a fire in the home and it became a danger to himself and his neighbors and I'm living actually right across the street from him, so that was one of my major concerns with that, about fire.

Don Mazzeo: Thank you, Karen. Anyone else like to comment on this? Please, Ma'am.

Rosa Fernandez, 428 Rudder Lane in Shipbuilder's Village: And I just want to go on record and make a comment that, I'm for this gentleman. He's a very nice person and a good person; I love Surf Bagels, but my main concern is having an arms dealer, which is what he is proposing to be; I know it's not a cartel, but it's an arms dealer living in my backyard and what's that going to mean? I know he's saying that people aren't going to be coming to the house and that kind of thing; but it just really worries me; we have a lot of kids in the neighborhood and I just don't feel real comfortable with it. I just wanted to make that point.

Don Mazzeo: Thank you, Rosa.

Rosa Fernandez: Thank you.

Richard Miller, Gristmill Drive, Milton: Just two points. There was a statement that FedEx and other carriers would drop packages at that property. If the owner is not there to receive the packages, how will they remain secure on a doorstep?

Don Mazzeo: I think I can answer that for you; it's going to be a signature of the individual only; if it's not, it goes back to the warehouse of the shipper; that I can tell you.

Richard Miller: Thank you. The other point I wanted to raise, I'm not afraid of guns, pistols or weapons, but given the nature of the business, are there other retail locations outside of our residential area where this enterprise can be conducted? Thank you.

Don Mazzeo: Thank you, Rich. Anyone else?

Jeff Dailey, 211 Gristmill Drive: I want to thank Mr. Mazzeo for citing the restrictive covenants, they are in fact attached to one's deeds; they are registered with the County and no matter the status of the developer's and other builders, etc., they are long standing and long lasting. I'm also going to take this opportunity to chide the Town Solicitor. I'm old enough to be your Father. It is not incumbent upon the Town to ask a neighbor whether he or she knows of a business, or any business for that matter, in their neighborhood, especially one with restrictive covenants; that's something that the Town should research. Thank you.

Don Mazzeo: Thank you, Jeff. Any other comments this evening on this application? Seeing none, I will close the public portion of this meeting for that application.

Seth Thompson: Any written comments, Mr. Davis?

Don Mazzeo: I did hear something about fire safety, ammo, etc., etc. Could you respond to that, please?

Paul Garchinsky: I certainly can. Yeah.

Robin Davis: The applicant, before the meeting started, handed me some written comments from Representative Lopez, that I'll pass out.

Don Mazzeo: Okay, thank you. Please continue.

Paul Garchinsky: Personal ammo will be stored on location and it's there currently and it's in ammo boxes, inside a fire safe.

Don Mazzeo: And ammo coming into your facility/home for the purposes of resale through your business, along with the weapons? Will that happen?

Paul Garchinsky: You actually don't need a Federal Firearms License to sell ammunition.

Don Mazzeo: That wasn't my question.

Paul Garchinsky: But I'm not. I'm not. Yeah.

Don Mazzeo: Thank you.

Paul Garchinsky: My primary interest is the...

Don Mazzeo: Okay. I personally would like... I'm having difficulty here, as much as even our legislator Mr. Ernesto Lopez seems to be in favor of having this happen, he doesn't live here, number one; number two, it's a business that you're trying to start in a residential area. I hear concerns. I have concerns about folks coming in and eventually they're going to know that you're going to have that business; whether they know you have weapons today, or not. It is now going to be public record. They all know you have weapons there. Are you on-site 24/7?

Paul Garchinsky: No, of course not. I'm working.

Don Mazzeo: Of course, not. Do you have a security system in your business/home currently?

Paul Garchinsky: Currently, no.

Don Mazzeo: Are you likely to have one if you're going to have this business?

Paul Garchinsky: Well, of course.

Don Mazzeo: Okay. It's nice that you're going to have that. That's assuming that you're going to have a business there. I have difficulty with this application because one, you're in a residential area. I can understand you don't want to find a little office space someplace, off-site, elsewhere in town; but I don't feel comfortable taking your covenants and throwing them to the wind; which I don't know if we have the right to do. We can't enforce them; but I don't see us going ahead and changing them and allowing you to do something when you're not allowed to do it. It's a law. It's a... I don't know if that's the term. Is it a law? It's not a law. It's a signed document of agreement.

Seth Thompson: Right. Restrictive Covenants are contractual in nature, they're binding basically for the all the owners within the property. So...

Don Mazzeo: Okay.

Lynn Ekelund: That leads into my question. Do you own the home?

Paul Garchinsky: Myself and my fiancée.

Lynn Ekelund: Because I looked up the Sussex County tax map and according to the Sussex County tax records, Christine Durst, owns the home.

Paul Garchinsky: My fiancée.

Lynn Ekelund: Then you do not own the home?

Paul Garchinsky: No.

Lynn Ekelund: Okay, so you're not the homeowner?

Paul Garchinsky: I'm not.

Lynn Ekelund: So the restrictive covenants that are attached to the deed and you're not a party to the deed.

Paul Garchinsky: I'm not.

Lynn Ekelund: Okay. Thank you.

Seth Thompson: They would flow to the property owner, so...

Lynn Ekelund: Is the property owner... I mean, she's your fiancée, but I don't see anything in any of the documentation that I have that she's aware.

Seth Thompson: She's on the application.

Lynn Ekelund: Well her name is on the application, but it looks like it's the same printing.

Paul Garchinsky: She is aware.

Barry Goodinson: If she's not, she better be, right? Or you have some explaining to do.

Paul Garchinsky: Or else I have some serious explaining to do, yeah.

Lynn Ekelund: I share a lot of Mr. Mazzeo's concerns.

Seth Thompson: If it's any help too, I can go through the standard that our specific Town Code applies to it and certainly the comments in terms of _____ being a public or semi-public use, that's kind of the back drop typically for a Conditional Use. The way your Code has it set up, you can have a Conditional Use in any zone. Very often you'll see a special exception, where there might be a need for additional requirements in a particular zone that the use is permitted, but there's some need to put conditions on it, that hence the term Conditional Use, in order to safeguard the public and make sure that it's fitting within the neighborhood. Again, you don't really have that here, in that the way your Code is set up, you can apply for a Conditional Use in any zone, so the standard that your Code sets out, it does specifically refer to any use that's not permitted in the zoning district for which it is intended. For example, businesses, commercial stores, or Light Industrial uses; that's not limiting language, but it indicates that the thinking was you potentially look to be putting commercial uses in residential areas; however, the way your Code defines it's standard, it needs to be that the location is appropriate and that the public health, safety, morals and general welfare will not be adversely affected; that off street parking facilities will be provided; that they do not contribute to the traffic problem on congested roads; and that necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values; and further provided that the additional standards of the Zoning Chapter are complied with. So that's the backdrop. You need to be looking at whether the location is appropriate and certainly the town doesn't enforce restrictive covenants because those are contractual rights and obligations between individual property owners; however, it seems that that could be a factor in terms of whether that location is indeed appropriate. The other step is then arriving at whether the public health, safety, morals and general welfare will not be adversely affected. Then, in terms of the parking requirements, obviously that doesn't seem to be an issue, based on what we've heard tonight, but you still fall back to protection of surrounding property persons and neighborhood values.

7. Business – Discussion and possible vote on the following items:

a. Preliminary Site Plan Review/Approval

The applicant, Chestnut Properties, is requesting a preliminary site plan review/approval to construct an underground propane tank field on a portion of the open space area in Phase 2B of Cannery Village. The proposed propane tank field will be located in the area of the Community Center. The property is identified by Sussex County Tax Map and Parcel # 2-35-20.00-57.00.

Don Mazzeo: I will ask Mr. Kerr to go over your engineering letter to us, for those items that were not specifically addressed, which I believe there are only two or three.

Bob Kerr, CABA Associates: I'm not sure I marked all the ones that were addressed.

Don Mazzeo: No. 2, particularly, where you are indicating that the data sheet identifies the site area as three-quarters of an acre, when it's only less than half an acre.

Bob Kerr: Yes, there's just a discrepancy there that needs to be corrected before the final site plan is done. We talked about you may want to make a condition on a time that the existing facility has to be removed, so that there's an actual note on the drawing. Kind of nos. 4 and 6 combined, I'm a little concerned that the existing paving cross-section, I believe is only 2" of

hot mix on the alley, depending on the weight of the truck that really wasn't designed for truck traffic. There's some truck traffic on those alleys, but not a lot. I'm not sure what the weight of the truck that's going to be making deliveries will be. No. 5, is whether they're able to turn around in the site, or is this truck going to pull in and then back all the way out to the main road? That wasn't addressed when they were giving their comments.

Don Mazzeo: Okay.

Bob Kerr: We've talked about the stone. Other than that, I believe we've touched on everything that's in the memo. The one thing I would say in addition to what's here and its in No. 16, but the Fire Marshall is the one who has the most say over the setbacks from property lines and the location of the tank and many of the requirements for this type of installation; certainly before we would recommend a final approval of this, that has to be in hand from the applicant.

Don Mazzeo: Before the applicant then, I would ask, or of the applicant, were there any other sites within the complex that were contemplated and if not, why not; and why did you pick this particular location over any other?

Zach Crouch: This actual location was actually determined based on where the best central location was for the tank field itself; based on being a permanent location, but also from the perspective of Chestnut; this is where they basically said that this is where the facility needs to go. We can't... They basically have to tell us where it's going and we're the gas folks; it's at their mercy and... right.

Don Mazzeo: So, in essence, you were directed to place the tanks in that location and that location only.

Zach Crouch: That is correct. Chestnut Properties basically told us here's the location and we just prepare the plan based on that scenario, submitted it to... The temporary facility is either going to go to one place or the other and I guess in Phase 3A it was supposed to be a permanent structure.

Don Mazzeo: We understand the consequences of when you don't have property any longer, you can't put it there. I'll ask our attorney, would it be appropriate to have Chestnut Properties come in here and explain to us why they chose that particular location over all others, or any others?

Seth Thompson: You could make it a condition of the preliminary approval and have them come in and give that explanation at the final site plan.

Don Mazzeo: But not prior to... A continuation? Table it until such time as they come back? We need a legal stance on this. I personally don't want to go forward giving a preliminary, with the condition that Chestnut Properties comes in and tells us that this is the only place that they're going to give them. I'd like to hear the explanation and then perhaps move along to a preliminary.

Seth Thompson: One of the issues that you run into is the fact that it's not an identified requirement of the site plan in terms of the applicant identifying what other sites they considered, so you then need to look at the catch all, in terms of whether it fits within the purpose for the site plan; that being to determine full compliance with the intent of the standards of the chapter and evaluate the site plan in order to minimize the conflicts of the site layout, basically with the surrounding areas, so that it doesn't adversely affect the health, safety and overall welfare. I think that's a stretch to say what else did you consider? The focus of this section of Chapter 220, seems to be is this site appropriate?

Don Mazzeo: Did I hear testimony that the Fire Marshall has already provided preliminary approval for this particular location and setbacks?

Charles Sockwriter: Yes, when they initially gave us this site, they said that's where you're going to put the tank field, we had these guys draw it up and we submitted it to the Fire Marshall and got preliminary approval; because we have to know it fits and you have your

setbacks and the safety features and all that; and we already have that. We had that last summer.
Don Mazzeo: One last question while you're there. What are the plans for the truck to go in and turn around, if any, or back out? I see there's a kind of a turn out there, but is it sufficient for your size vehicle?

Charles Sockwriter: That's basically a hammer head, which is actually for _____. The truck can pull in, back up there and drive back out.

Don Mazzeo: Okay, so the Fire Marshall has provided that information to you. Okay.

Charles Sockwriter: Yes.

Zach Crouch: To meet all the requirements, yes, we will go through all the agencies to get their final approval, but yes there are certain setbacks, distances, that they wanted to go through, because they actually have a little bit more of a submittal for this whole tank thing; it isn't just a site plan and they had to go through that just to make sure it would even work before we even put it on paper. So they have seen this and this does meet their requirements for truck turnaround, based on the size of the truck that they're going to use.

Don Mazzeo: You're not coming in with an 18-wheeler?

Charles Sockwriter: No. It is a tractor-trailer, but it's a 6-wheeler, 5,000 gallon truck. It's smaller.

Don Mazzeo: Okay do we have any other questions, comments from the Commission and for our engineer?

Bob Kerr: If I may, Mr. Chairman, I guess I'm a little confused over the truck. It is a tractor-trailer, but just a three axle and what would the overall length be?

Charles Sockwriter: I don't have that number in my head. I'm not positive. I don't know if I gave it to you. It's not very long, it actually turns around better than a 6-wheel truck. I've driven it.

Barry Goodinson: It was specified when it was submitted to the Fire Marshall?

Zach Crouch: Yes. We have to supply that to them.

Charles Sockwriter: I don't have that information.

Zach Crouch: There again, we can send that information over to you. It's part of the final approval and we have to do that, so I know that's something that has to be provided.

Don Mazzeo: Okay. I'll defer once again to my attorney here. There was a question concerning bonding or guarantees that the removal and grounds keeping, if you will, on the old site; can that be part and parcel of a condition?

Seth Thompson: That's a condition that's related to this site, because you're approving this site based on the removal of the other site.

Tim Nicholson: So it could be done.

Seth Thompson: That's right. That's much more in the wheel house.

Don Mazzeo: As a condition, if they don't do it, what then? Let's assume for a moment that this is going to go forward to a final and then after 35 days or 40 days they remove everything and they so choose not to take care of the property...

Seth Thompson: You would then call the bond.

Don Mazzeo: We can place a bond on them?

Seth Thompson: Right. I think that was the suggestion. Maybe I misunderstood your...

Don Mazzeo: That was a recommendation/suggestion. And the bond would be based upon...

Seth Thompson: Typically the way your code has it set up, it's 125% of whatever the costs are going to be, based on our engineer's numbers and then the developer typically gives a set of numbers and they're normally able to agree on what they think a cost estimate would be.

Charles Sockwriter: That would not be a problem, just for security.

Don Mazzeo: That's what it is, it's a security. We like security. Sometimes it doesn't always happen.

Charles Sockwriter: We are well aware of that.

Don Mazzeo: Okay, any other questions, comments from the Commission? Hearing none, I will entertain a motion.

Tim Nicholson: So moved.

Don Mazzeo: Well.

Tim Nicholson: You can tell, I want to get this thing out of here, can you?

Don Mazzeo: You'd like to make a motion that what... Can you give me some words, give me some verbiage.

Tim Nicholson: Preliminary approval, subject to meeting the requirements...

Seth Thompson: Perhaps I can... Hopefully I made some good notes that we can incorporate into the motion.

Don Mazzeo: That would be good.

Seth Thompson: That the items identified in the memorandum dated March 12, 2013 from the Town's Engineer will be incorporated, including the correction as No. 2; in terms of No. 3, it will be a 45 day period by which the temporary storage location will need to be removed once the new location is completed and the applicant will need to post a bond for 125% of the cost of performance. Mr. Kerr, did you want there to be a note on the plans in terms of the type of vehicle, or was the Commission satisfied with the fact that the Fire Marshall had to approve that?

Don Mazzeo: I would accept certainly the Fire Marshall's recommendations in lieu of this.

Tim Nicholson: I would too.

Seth Thompson: So nothing on No. 5. In terms of No. 7, it will need to be a paved surface; it can be concrete, but it can't be stone. The applicant, in terms of No. 9, verified that there will be very little above-ground equipment; I suppose it depends on if you define those pipes as equipment.

Don Mazzeo: There are pipes above-ground, but that's part and parcel of the operation.

Seth Thompson: The applicant confirmed in No. 10 that there's no additional lighting, no new signage for No. 11. The applicant agreed that No. 12, the minimum height will be 7'. For No. 13, the extension of the easement will be approximately 3' to 5'; whatever the distance that is necessary to accommodate the new height of the trees. The applicant confirmed No. 14, that the fence is indeed required and No. 15, there's going to be a note added, in terms of Poore's being responsible for the maintenance within the easement. And then No. 16, the standard language in terms of all the outside approvals, most notably in this case, the Fire Marshall's Office.

Lynn Ekelund: One thing that I didn't hear when you were talking about the bond for removing the existing tanks, is you said 45 days they should be removed, but I didn't hear you saying anything that this site would be made whole, seeded, graded, whatever.

Seth Thompson: Sorry, in terms of the scope of work to be done, the old equipment will be removed and as the Town Engineer indicated, there will be restoration of the surface.

Don Mazzeo: And bonded for 125% of value.

Lynn Ekelund: Yes.

Seth Thompson: Correct. For that work to restore the temporary site.

Don Mazzeo: It's only the temporary site.

Michael Cote: What about the 2" thick roadway?

Seth Thompson: Was there any consensus on that?

Don Mazzeo: The applicant here is bringing in equipment on their streets; meaning Cannery Village's streets. I believe it would be the developer's responsibility to take care of that issue; but how do we get that developer here and making it part of the application and approval process, legally?

Seth Thompson: Right, I'm not quite sure I understand... You want the developer to be here?

Don Mazzeo: There's an issue that has been brought from the public that indicates that there's a ponding problem already in existence and we have already seen in the letter from our engineer that the entranceway connection, if you will, is probably not sufficient in its strength and design to handle this commercial vehicle traffic. But it's not the applicant, here, tonight, who's responsible for those roadways, it is the developer, in my opinion. Tell me I'm wrong and then I'll back off, but otherwise, I'd like to see the developer here, telling us that he'll then also fix that.

Seth Thompson: It sounds to me like the gentlemen here tonight are here on behalf of the applicant and that really is the property owner at this point; so they're here on behalf of Chestnut; so you can make a condition that they come up with an adequate proposal in terms of how to address the flooding issue.

Barry Goodinson: Yes, that's a better way to do it.

Don Mazzeo: Then I would like to see that condition added to that.

Seth Thompson: Okay.

Lynn Ekelund: That's the flooding condition. What about the issues with Acre Lane?

Seth Thompson: Okay, as well as the thickness of Acre Lane, so again, the addition conditions are that for final site plan approval the applicant will need to show a remediation of the flooding, as well as improvements to the roadway, acceptable to the Commission.

Don Mazzeo: Right. Only at that intersection; not the entire development, as much as I would like to see that, as well. Okay, we now have a motion on the floor and before we do that, do we have Mr. Kerr's confidence?

Bob Kerr: One additional item on the bond is when that must be submitted.

Seth Thompson: I think the bond's a condition of final site plan approval, so it will have to be submitted; but it's good that everybody knows that up front. That needs to be received really before final site plan should go on the agenda.

Don Mazzeo: When the final gets on the agenda, Robin should have in his possession the bond.

Charles Sockwriter: Trying to get a bond from a bonding agency without approval, is like impossible.

Seth Thompson: Okay.

Charles Sockwriter: Before construction starts, it's typically you have a pre-____; you've got to get a building permit and all that happy stuff; so there's no way to get approved before.

Bob Kerr: At time of building permit.

Don Mazzeo: At time of building permit. Thank you.

Seth Thompson: At time of building permit.

Don Mazzeo: Alright, we have a motion on the table. Do I hear a second?

Lynn Ekelund: I'll second.

Don Mazzeo: Let's have a roll call vote:

Barry Goodinson	Yes
Lynn Ekelund	Yes
Tim Nicholson	Yes
Don Mazzeo	Yes

Don Mazzeo: We have a preliminary site plan approval for Chestnut Properties to have the tank farm in the location as presently shown.

b. Preliminary Subdivision Plan Review/Approval

The applicant, Fernmoor Homes at Heritage Creek, is requesting a preliminary subdivision

review/approval for Phase 3 of Heritage Creek further identified by Sussex County Tax Map and Parcel # 2-35-20.00-56.00.

Don Mazzeo: Okay. Do we have any other questions, concerns from the Commission at this point, of the applicant? Seeing none I will open this up to the public for comment. Anyone here wishing to comment on this application? I see none.

Seth Thompson: Any written comments?

Robin Davis: There were no written comments received before 5:00 p.m. this evening.

Don Mazzeo: No other comments. I will entertain a motion.

Barry Goodinson: I move that it be approved with slight alterations.

Seth Thompson: Noted in Mr. Kerr's memo of March 12, 2013.

Don Mazzeo: That we will install the water main out in the front of the property.

Seth Thompson: So with regard to comment No. 9, the Commission would like the water service at the front of the houses.

Don Mazzeo: Yes.

Seth Thompson: Then comment No. 10, the applicant agreed to do.

Don Mazzeo: Correct.

Seth Thompson: It sounds like the Commission is not looking to incorporate comment No. 12 regarding the sidewalk.

Don Mazzeo: Correct.

Seth Thompson: The applicant agreed with comment No. 13 and I think...

Don Mazzeo: And all other outside agency approvals must be blah, blah, blah, blah.

Seth Thompson: Yes.

Don Mazzeo: Okay.

Lynn Ekelund: I'll second that.

Don Mazzeo: Roll call vote please:

Barry Goodinson	Yes
Lynn Ekelund	Yes
Tim Nicholson	Yes
Don Mazzeo	Yes

Don Mazzeo: We have a preliminary Sub-Division plan approval for Fernmoor Homes at Heritage Creek.

c. Conditional Use Application Review/Approval

The applicant, Paul Garchinsky, is requesting a review/approval of a conditional use application for the internet-based sales of historical and modern firearms in a portion of the home located at 426 Main Sail Lane. The property is further identified by Sussex County Tax Map and Parcel # 2-35-14.00-184.00.

Don Mazzeo: Let me put this in a perspective that I thought about for the last couple of weeks, since I've had the application in front of me. Based on what our solicitor has just indicated, basically if your business application for Conditional Use were to have come in front of us and you were going to be selling wooden chairs, and you were bringing in wooden chairs and sending out wooden chairs and doing anything else you want to do with wooden chairs; I might lend myself to thinking, well that's not so bad. It's not going to be a safety issue and potential adverse affects to the neighborhood. I don't see that. However,

we're not talking about wooden chairs; we're talking about weapons and this is a moral dilemma in today's society and we're not here to discuss that; we're only discussing basically is your business request for Conditional Use appropriate. I believe it not to be. I believe it's not a safety issue, per se, but it certainly is going to lend itself to becoming a safety issue. Any other comments from the Commission?

Barry Goodinson: I'll just go back to my earlier question, is it essential and desirable for the general convenience and welfare of the town and I just don't think that was sufficiently answered, so that's where my concern arises.

Tim Nicholson: I'm concerned about all the issues that were raised, especially the potential violation of covenants. I don't see any compelling reason to approve this.

Don Mazzeo: If there are no other questions, comments from the Commission, we'll entertain a motion on this application for Conditional Use.

Seth Thompson: It's a recommendation.

Don Mazzeo: To Mayor and Council.

Seth Thompson: Correct.

Lynn Ekelund: I move that the Town Council do not recommend approval of a Conditional Use application for the internet-based sales of historical and modern firearms in a portion of the home located at 426 Main Sail Lane. The property is further identified by Sussex County Tax Map and Parcel # 2-35-14.00-184.00.

Tim Nicholson: Second.

Lynn Ekelund: Do you need us to identify the reasons?

Seth Thompson: It sounds like everybody articulated their reasons, prior to the motion. I take it that the Commission will then just use the minutes as it's report to Council?

Don Mazzeo: Yes. Thank you. I have a motion. Do I have a second?

Tim Nicholson: Second.

Don Mazzeo: We have a second. Roll call vote, please:

Barry Goodinson	Yes
Lynn Ekelund	Yes
Tim Nicholson	Yes
Don Mazzeo	Yes

Don Mazzeo: This application has been forwarded to Town Council with a recommendation to deny.

Paul Garchinsky: Thank you for your time.

Don Mazzeo: Thank you.

8. Adjournment

Lynn Ekelund: Move to adjourn.

Barry Goodinson: Second.

Don Mazzeo: We all nodded. Meeting is adjourned at 8:02 p.m.